

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:16-cv-00736-FDW

MICHAEL WAYNE UPTON, )  
                          )  
Plaintiff,             )  
                          )  
v.                      )  
                          )  
GASTON CO. JAIL;       )  
FNU WHITLOCK, Gaston County     )  
Jail, Officer; DANIEL TORAS, Gaston     )  
County Jail, Nurse,         )  
                          )  
Defendants.            )  
                          )

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**ORDER**

**THIS MATTER** is before the Court following receipt of a letter from the North Carolina Department of Public Safety (DPS).

On October 25, 2016, the Clerk docketed Plaintiff's pro se complaint which he filed pursuant to 42 U.S.C. § 1983. (Doc. No. 1). At the time he filed the complaint, Plaintiff was a pretrial detainee and he alleges that one or more of the defendants were responsible for depriving him of proper medical care which resulted in physical and mental suffering. (Doc. No. 1).

Although Plaintiff does not identify the pending criminal charges in his complaint, according the website maintained by DPS, he was convicted on May 17, 2016, on two counts of assault with a deadly weapon inflicting serious injury (principal), one count of communicating threats, and one count of resisting an officer. The latter two convictions were consolidated for judgment with the assault conviction and he was sentenced in Gaston County Superior Court to a term of 11-years and 7-months' imprisonment, resulting in a projected release date of March 1, 2025.

The letter from DPS explains that Plaintiff died on December 2, 2016, while in state prison

and the DPS website notes Plaintiff's death on that date as well. Because Plaintiff is proceeding pro se and no one has moved to prosecute this civil action on behalf of Plaintiff's estate, the Court must dismiss the complaint.

**IT IS, THEREFORE, ORDERED** that Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE**.

The Clerk is respectfully directed to close this civil case.

**SO ORDERED.**

Signed: March 13, 2017



Frank D. Whitney  
Chief United States District Judge

